HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No. 17117 OF 2006

Between:

Vatamgari Venkataramanaiah

… Petitioner

AND

The State Election Commission,
Rep., by its Secretary, Budhabhavan
Secunderabad & five others.

… Respondents

Dated: 13th February-2007

Counsel for the petitioner : Sri S.R.Ashok

Counsel for respondent Nos.2to4 : Government Pleader for Panchayat Raj
Counsel for respondent Nos.1&5 : Sri V.V.Prabhakar Rao
Counsel for respondent No.6 : Sri A.V.Shivaiah

: ORDER :

Per Sri G.S. Singhvi, CJ

The question which calls for adjudication in this writ petition is whether the writ petition filed under Article 226 of the Constitution of India for quashing the election of respondent No.6 as Sarpanch of Zamin Kothapalem Gram Panchayat, Vakadu Mandal, Nellore District deserves to be entertained ignoring the bar contained in Article 243-O of the Constitution.

The petitioner has questioned the election of respondent No.6 as Sarpanch primarily on the ground of violation of the provisions contained in Rules 59 and 60 of the Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules 2006 (for short "the 2006 Rules"). In the affidavit filed by him, the petitioner has averred that he and respondent contested election for the post of Sarpanch; that in the counting held on 06.8.2006, he secured 710 vaild votes as against 707 votes secured by respondent No.6; that immediately after completion of the formalities and procedure, the Returning Officer (respondent No.5) signed Form No.26 and declared him as elected in the presence of the public and local media persons, but on being pressured by rival group belonging to respondent No.6, respondent No.5 recounted the votes and declared respondent No.6 elected on the premise that he secured 711 valid votes as against 702 valid votes secured by him i.e. the petitioner.

Sri S.R. Ashok, Senior Advocate, appearing for the petitioner

argued that the bar contained in Article 243-O of the Constitution to the entertainability of the writ petition filed under Article 226 of the Constitution is not absolute and in a case like the present one, the Court should not relegate the petitioner to the alternative remedy of election petition in terms of Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') and Rule 12 of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short 'the 1995 Rules'). In support of this argument, Sri S.R. Ashok relied on the judgments of the Supreme Court in **K. VENKATACHALAM v A. SWAMICKAN AND ANOTHER**[1] and a Division Bench of this Court in **UPPARI SUSHEELA v STATE ELECTION COMMISSIONER, HYDERABAD AND OTHERS**[2]. Learned counsel further argued that if Article 243-O is interpreted as curtailing the High Court's power of judicial review, then the same may have to be struck down on the ground of violation of the basic structure of the Constitution. According to the learned counsel, the Court should avoid interpretation of the constitutional provision, which may make it violative of the constitutional structure.

Shri V.V.Prabhakara Rao, learned Standing Counsel for State Election Commission and learned Government Pleader for Panchayat Raj Department argued that the remedy available to the petitioner under Section 233 of the Act read with Rule 12 of the 1995 Rules is an effective alternative remedy and, therefore, the Court should not entertain writ petition under Article 226 of the Constitution of India more so because of the bar contained in Article 243-O of the constitution.

We have given our most anxious consideration to the arguments of the learned counsel. In our opinion, the writ petition is liable to be dismissed.

In **EPPALA CHINA VENKATESWARLU AND OTHERS v SECRETARY TO GOVERNMENT, SOCIAL WELFARE (F) DEPARTMENT, HYDERABAD AND OTHERS**[3], this Court examined the scope of bar contained in Article 243-O(b). After a threadbare analysis of various constitutional provisions including Article 329(b), which is pari materia to Article 243-O(b) and making reference to large number of judicial precedent on the subject including those of **N.P. PONNUSWAMI v THE RETURNING OFFICER, NAMAKKAL CONSTITUENCY, NAMAKKAL, SALEM DISTRICT AND OTHERS**[4], **MOHINDER SINGH GILL AND ANOTHER v THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS**[5] this Court laid down the following propositions:

> "1. The word "election" appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the Competent Authority, whereby the electorates are called upon to elect Sarpanchas and Ward Members and ending with declaration of result. Reservation of offices of Sarpanch and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken

for the purpose of holding elections fall within the ambit of the term "election" (*N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Mohinder Singh Gill v. Chief Election Commissioner, Election Commission of India v. Shivaji and Election Commission of India v. Ashok Kumar (supra*))

(2) (i) The bar contained in Article 243-O which begins with *non-obstante* clause, debars all Courts from entertaining any challenge to law relating to delimitation of constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court's power of judicial review under Article 226. (*N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh, Election Commission of India v. Shivaji and Election Commission of India v. Ashok Kumar* (supra)).

(ii) The proposition contained in clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is made before issue of notification for holding election. (*State of U.P. v. Pradhan Sangh Kshetra Samiti* (supra)).

(iii) The Bar contained in Article 243-O(b) operates only till the adjudication of election dispute by an adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.

(3) The bar contained in Article 243-O operates at all stages of the election i.e., notification issued by the

State Election Commission calling upon the electorate to elect Sarpanches and Ward Members; reservation of offices of Sarpanches in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.

(4) The bar contained in Article 243-O(b) does not operate *qua* challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K(3) read with Article 243-K(1).

(5) The observations made in *Harnek Singh v. Charanjit Singh* (supra) have to be read in the light of the law laid down by the Constitution Benches in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh, Mohinder Singh Gill v. Chief Election Commissioner* (supra) and by three Judges Bench in *Election Commission of India v. Ashok Kumar* (supra).

(6) The High Court may entertain petition under Article 226 of the Constitution if the prayer contained in such petition does not have the effect of interpreting or delaying the process of election (*Election Commission of India v. Ashok Kumar* (supra)."

In view of the above, we hold that the writ petition filed by the petitioner for quashing the election of respondent No.6 as Sarpanch of Zamin Kothapalem Gram panchayat is liable to be dismissed.

In **K. VENKATACHALAM v A. SWAMICKAN AND ANOTHER** (1 supra) the Supreme Court approved the decision of the Division Bench of Madras High Court which had granted a declaration that the appellant was not qualified to sit as a member of the Legislative Assembly of Tamil Nadu because he did not possess the qualifications prescribed in clause (c) of Article 173 of the Constitution read with Section 5 of Representation of People Act 1951. While dealing with the issue whether Article 329(b) operates as a bar to the maintainability of the petition, the Supreme Court observed that the said bar does not apply to a case falling within the ambit of Articles 191 and 192 which provide for disqualification of membership and penalty for sitting and voting when disqualified and the whole election process is over.

A careful reading of the judgment shows that the Supreme Court rejected the argument based on Article 229-B because what was under challenge was the right of the appellant to sit as a Member of the Legislative Assembly on the ground that he was not possessing the basic qualification. The election of the appellant was not under challenge in so many terms. Therefore, that judgment cannot be read as laying down the proposition that in cases involving challenge to the election to any office of the 'panchayat', a term which necessarily includes Grampanchayat, Mandal Parishads and Zilla Parishads, the High Court can entertain the writ petition under Article 226 of the Constitution of India ignoring the unequivocal bar contained in clause (b) of Article 243(O).

The judgment of the Division Bench in **UPPARI SUSHEELA v STATE ELECTION COMMISSIONER, HYDERABAD AND OTHERS** (2 supra) does not contain any discussion on the interplay of Article

243(O)(b) vis-à-vis Article 226 of the Constitution of India. In para 5 of the judgment, the Division Bench did make a mention of the objection taken to the maintainability of the writ petition, but did not deal and decide the same. It appears that attention of the Division Bench was not drawn to the judgments of the Constitution Benches in **N.P. PONNUSWAMI v THE RETRUNING OFFICER, NAMAKKAL CONSTITUENCY, NAMAKKAL, SALAM DISTRICT** (4 supra) and **MOHINDER SINGH GILL AND ANOTHER v THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS** (5 supra).

In the result, the writ petition is dismissed leaving the petitioner free to avail remedy by filing election petition under Section 233 of the Andhra Pradesh Panchayat Raj Act 1994 read with rule 12 of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules 1995. We also direct that if the petitioner files election petition within 15 days from today, the respondents shall not be entitled to object to its maintainability on the ground of bar of limitation.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Dt: 13.02.2007
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[1] AIR 1999 SC 1723
[2] 2002 SUPPL (2) ALD 230 (DB)
[3] 2006 (5) ALD 409 (DB)
[4] AIR (39) 1952 SC 64
[5] AIR 1978 SC 851